

REMARKS

The present Amendment is in response to the Office Action dated January 22, 2004 in reference to the above-identified application. The Examiner set a shortened statutory period for reply of three (3) months, making the present Amendment due by April 22, 2004. Filed concurrently herewith is a request for a one-month extension of time so that the present Amendment is due by May 22, 2004, which is a Saturday so that the present Amendment is due by Monday, May 24, 2004.

Also filed with the present Amendment is a Request for Continued Examination (RCE) Transmittal, PTO form PTO/SB/30, and check no. 18330 in the amount of \$385.00 as required by 37 C.F.R. 1.114 and 37 C.F.R. 1.17(e). The Commissioner is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account No. 13-1940.

In the final Office Action, claims 1-12 and 23-27 were pending with claims 28-37 withdrawn from further consideration. Claims 1-12 and 23-27 were rejected under 35 U.S.C. § 112, second paragraph, "as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-12 and 23-27 were rejected under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) as being anticipated by or as or otherwise obvious in view of U.S. Patent No. 4,943,433 to Rudov, Publication No. WO91/11191, or AU A 81985/87.

To address the rejections, Applicant has canceled claims 1-12 and 23-27 and has added new claims 38-64, which are directed to a pharmaceutical

composition. Generally, the new independent claims recite that the pharmaceutical composition comprises a primary substance adapted to provide a primary chemical treatment, a pharmaceutically acceptable liquid extract from a juice derived from cereal plants to reduce the incidence or severity of side effects associated with the primary substance, and a pharmaceutically acceptable carrier. Applicant submits that the references made of record neither anticipate nor render obvious the new claims presented because the references do not teach a composition comprised of all three elements. Rather, at best, the references teach compositions that comprise two of the elements – the liquid extract and a pharmaceutically acceptable carrier therefor.

As explained in the response to the previous office action, both U.S. Patent No. 4,943,433 and AU-A-81985/87 relate to a pharmacologically effective or cosmetic substance for external application to treat e.g. acne, pimples, ulcers, cold sores. The substance includes an extract from plants of the grass family of plants particularly cereals, that is carried in a pharmaceutically acceptable aqueous carrier or excipient. The reference does not teach nor suggest the addition of a “primary substance” for the treatment of these ailments because the extract is effectively the “primary substance” of the composition disclosed.

With respect to Publication No. WO91/11191, the reference relates to a pharmacologically effective composition for direct introduction into body tissues or vessels for the treatment, for example, of tumors and viral infections. The composition includes the extract derived from cereal plants

and a pharmacologically acceptable liquid carrier. As with the other two references made of record, Publication No. WO91/11191 does not teach nor suggest the addition of a "primary substance" to the composition because the extract is effectively the "primary substance" used for the treatment of the ailments.

The combination of a primary treatment substance, such as an antibiotic, administered simultaneously along with the plant extract in a common carrier, is not disclosed or suggested in the cited prior art. The composition disclosed and claimed provides a novel, effective, and efficient therapeutic treatment for animals that has not previously been recognized, noted, or observed, and that is not taught or suggested by the references of record.

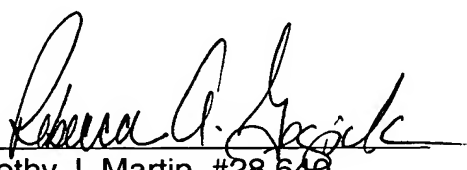
Based on the foregoing, Applicant submits that the present application is in complete condition for allowance, and action to that end is courteously solicited. If any issues remain to be resolved prior to the granting of this application, the Examiner is requested to contact the undersigned attorney for the Applicant at the telephone number listed below.



No additional claims fees are believed to be payable upon the Amendment. However, the Commissioner is hereby authorized to charge any deficiency in the required fees, or to credit any overpayment, to deposit account number 13-1940.


Respectfully submitted,

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CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8

I hereby certify that the foregoing **AMENDMENT (11 pages)**, and **Request for a one-month Extension of Time (2 pages)** is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 24th day of May, 2004.


Rebecca A. Gegick